

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
[REDACTED],	)	DOCKET NO. 18974
	)	
Petitioner.	)	DECISION
	)	
	)	

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On June 16, 2005, the Field Services Bureau of the Idaho State Tax Commission issued Notice of Deficiency Determination to [Redacted] (taxpayer), proposing penalty and interest for tax year 2003 in the amount of \$1,381 of penalty and \$292.16 of interest.

In her letter of protest dated August 8, 2005, the taxpayer appealed the determination and asked for abatement of all or a portion of the penalty and interest. The taxpayer's file was transferred to the Legal/Tax Policy Division for administrative review. The Tax Commission, having reviewed the file, hereby issues its decision based thereon.

In the letter asking for consideration, the taxpayer did not claim her 2003 Idaho individual income tax return was filed and paid timely. She said the penalty was "heavy" and, if it were reduced, it could apply to future tax payments. She said she lives alone and is working diligently to provide for herself. She complained that the penalty is burdensome.

A teleconference with the taxpayer was held on December 7, 2005. At that time, she explained that, after making some bad investments after her husband died, she has struggled to become financially solvent once again. When asked when she planned to file her Idaho returns for 1999, 2001, and 2002, the taxpayer said she is working with her preparer to get them filed. She did not have an estimated completion date.

Idaho Code § 63-3045(6) states:

- (a) Interest shall apply to deficiencies in tax and refunds of tax. Interest shall not apply to any penalty or to unpaid accrued interest. Interest relating to deficiencies or refunds accruing after the original due date of the return, but not including extensions of the due date, shall be computed on the net of any underpayments and overpayments of a tax liability required to be shown as due on the same return.
- (b) Interest upon any deficiency shall be assessed at the same time as the deficiency, shall be due and payable upon notice and demand from the state tax commission and shall be collected as a part of the tax at the rate per annum determined under the provisions of subsection (6)(c) of this section from the date prescribed for the payment of the tax. In the event any of the deficiency is reduced by reason of a carryback of a net operating loss or a capital loss carryback, such reduction in deficiency shall not affect the computation of interest under this subsection for the period ending with the last day of the taxable year in which the net operating loss or capital loss arises.
- (c) The rate of interest accruing during any calendar year, or portion thereof, upon any deficiency, or payable upon an overpayment or refund shall be two percent (2%) plus the rate determined under section 1274(d), Internal Revenue Code, by the secretary of the treasury of the United States as the midterm federal rate as it applies on October 15 of the immediately preceding calendar year rounded to the nearest whole number.

The Idaho Supreme Court heard Union Pac. R.R. v. State Tax Comm'n, 105 Idaho 471, 670 P.2d 878 (1983). In this case, there was a substantial delay in resolving the taxpayer's liability. In addressing whether the taxpayer was required to pay interest, the Court stated:

The general rule is that absent statutory authorization, courts have no power to remit interest imposed by statute on a tax deficiency. American Airlines, Inc. v. City of St. Louis, 368 S.W.2d 161 (Mo. 1963); see generally 85 C.J.S. Taxation, § 1031(c) (1954). We agree with the State that I.C. § 63-3045(c) is clear and unequivocal when it states that 'interest . . . shall be assessed' and 'shall be collected.' This section is not discretionary, but rather, it is mandatory. Following the language of this section we hold that this Court, as well as the district court, lacks any power to remit the interest that is mandated by the statute.

Interest imposed under Idaho Code § 63-3045 is a mandatory charge. The charge is calculated from the due date of the return at a rate that is established by the legislature each year.

Interest charged in the Notice of Deficiency Determination must be affirmed.

Idaho Code §§ 63-3046(c) and (g) provide for a delinquency penalty:

(c) (1) In the event the return required by this chapter is not filed on or before the due date (including extensions) of the return, there may be collected a penalty of five percent (5%) of the tax due on such return for each month elapsing after the due date (including extensions) of such returns until the return is filed.

(2) In the event the return required by this chapter is filed but the tax shown thereon to be due is not paid, there may be collected a penalty of one-half percent (0.5%) of the tax due on such return for each month elapsing after the later of the due date of such return or the date the return was filed until the tax is paid.

(g) Total penalties imposed under subsections (a), (c) and (d) of this section and under section 63-3033, Idaho Code, shall not exceed twenty-five percent (25%) of the tax due on the return.

The taxpayer's 2003 Idaho return was filed nearly a year after the due date. In addition, review of the taxpayer's filing history shows the taxpayer has not filed an Idaho return on time as far back as the 1992 return. In fact, the 1992 through 1997 returns were not filed until 2001, and the 1999, 2001, and 2002 returns have not yet been filed. The late pay penalty of \$1,381 for tax year 2003 was appropriately imposed.

WHEREFORE, the Notice of Deficiency Determination dated June 16, 2005, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2003	\$5,524	\$1,381	\$294.97	\$7,199.97
			PAYMENT RECEIVED	( <u>5,534.00</u> )
			TOTAL DUE	<u>\$1,665.97</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2006.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE BY MAIL**

I hereby certify that I have on this \_\_\_\_ day of \_\_\_\_\_, 2006, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.

[REDACTED]

[REDACTED]

[REDACTED]